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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,161	06/26/2003	Muneyoshi Ikeda	03369/LH	7860
1933	7590	11/09/2004	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 767 THIRD AVENUE 25TH FLOOR NEW YORK, NY 10017-2023			LOPEZ, FRANK D	
			ART UNIT	PAPER NUMBER
			3745	

DATE MAILED: 11/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/609,161	IKEDA ET AL.
	Examiner	Art Unit
	F. Daniel Lopez	3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 June 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/26/03.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Drawings

The drawings are objected to because element 42 must be labeled as –Swing Speed Detecting Means--.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the controller must be shown with outputting a speed reduction command when the speed is greater than or equal to a predetermined speed (claim 5) or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 2-4, 6 and 8 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, 4, 6 and 8 line 3 “said swing pins” is confusing, since claim 1 only claims a single “swing pin” (line 4).

In claim 3 line 14 “valve” should be –valves--, to agree with line 9.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5 and 7 are rejected under 35 U.S.C. § 102(b) as being anticipated by Morishita (see discussion below, under 103 rejection, for the limitations of claim1, see fig 10 concerning the limitations of claims 5 and 7). The examiner understands that the claimed swing control apparatus includes a working machine attached to a portion of a connected machine by a swing pin, and that the details of the connected machine (i.e. that it has a revolving superstructure) is intended use and therefore is not given patentable weight. If applicant intends that the details of the connected machine be a part of the claimed invention and the claims are so modified; the claims would not be allowed based on a 103 rejection, using Morishita and another reference, such as Japan 63206535.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 2-4, 6 and 8 are rejected under 35 U.S.C. § 103 as being unpatentable over Morishita. Morishita discloses a swing control apparatus comprising a working machine (7) attached to a portion of a connected machine (4) by upper and lower swing pins separated along a vertical axis (P1); a swing angle detector (30) for detecting a swing angle of the working machine, disposed along the vertical axis (e.g. column 6 line 51-53); a hydraulic actuator (9, 10) swingingly drives the working machine; wherein an electromagnetic proportional operation valve (19) controls the flow rate of pressure oil supplied to the actuator; wherein a controller outputs a speed reduction command (see e.g. fig 6, 7 or 10), to reduce the swing speed gradually from a position of a predetermined angle short of the stroke end of the swing toward the stroke end, based on the swing angle signal from the swing angle detector, to the operation valve; but does not disclose that the swing angle detector is provided at a lower end portion of the upper swing pin; that there is proportional electromagnetic valves capable of controlling pilot pressure for operating the operation valve, where in the controller outputs the speed reduction command to the proportional electromagnetic valves.

Since the swing angle detector of Morishita is provided along the vertical axis of the swing pin, it must be provided either at an upper or lower end portion of the upper swing pin, or at an upper or lower end portion of the lower swing pin. Since providing the swing angle detector at either an upper end portion of the upper swing pin, or a lower end portion of the lower swing pin would place it in danger of being damaged by things falling onto it or being thrown up into it, respectively, one having ordinary skill in this art would place the swing angle detector of Morishita at either a lower end portion of the upper swing pin, or at an upper end portion of the lower swing pin, to protect it from damage. Since this includes the swing angle detector being provided at a lower end portion of the upper swing pin, it meets the limitation of claims 2, 4, 6 and 8.

Official notice is taken, for valves controlling flow to a hydraulic actuator, that a variety of valves are functionally equivalent to each other, including an electromagnetic proportional operation valve and proportional electromagnetic valves controlling pilot pressure for operating a pilot operated operation valve. Since an electromagnetic proportional operation valve and proportional electromagnetic valves controlling pilot

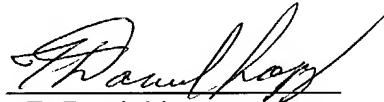
pressure for operating a pilot operated operation valve are functionally equivalent in the hydraulic actuator art, it would have been obvious at the time the invention was made to one having ordinary skill in the art to replace the electromagnetic proportional operation valve of Morishita with proportional electromagnetic valves controlling pilot pressure for operating a pilot operated operation valve, as a matter of engineering expediency.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is (703) 308-0008. The examiner can normally be reached on Monday-Thursday from 6:30 AM -4:00 PM. The examiner can also be reached on alternate Fridays.

I will be moving in November 2004, to the New PTO campus. When I move, my new phone number will be 571- 272-4821.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on (703) 308-1044. The fax number for this group is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861.



F. Daniel Lopez
F. Daniel Lopez
Primary Examiner
Art Unit 3745
November 5, 2004